

**UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD COSS,  
Plaintiff

v.

PAUL J. WARE, et al.,  
Defendants

: CIVIL ACTION NO. 3:CV-10-1479

:

:

: (Judge Nealon)

: (Magistrate Judge Mannion)

:

:

**FILED  
SCRANTON**

JUL 5 2011

PER

DEPUTY CLERK

**MEMORANDUM and ORDER**

On July 19, 2010, the Plaintiff, Edward Coss, who is currently incarcerated at the State Correctional Institution, Huntingdon, Pennsylvania, filed the instant action alleging civil rights violations pursuant to 42 U.S.C. § 1983 and state law claims of intentional infliction of emotional distress, false arrest, false imprisonment and malicious prosecution, and civil conspiracy. (Doc. 1). In lieu of paying a filing fee, Plaintiff filed a motion to proceed in forma pauperis on July 26, 2010 which Magistrate Judge Malachy E. Mannion granted on July 30, 2010. (Docs. 5 & 8). Plaintiff filed a motion for default judgment against Defendant Sal Clemente on December 22, 2010 and a motion for default judgment against Defendant Cope on April 7, 2011. (Docs. 40 & 52). On June 9, 2011, Magistrate Judge Mannion recommended that both motions for default judgement be denied. (Doc. 56). To date, Plaintiff has not filed objections to the Magistrate Judge's Report and

Recommendation. The motions are now ripe for disposition and, for the reasons that follow, will be dismissed as recommended.

### **Discussion**

When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. Thomas v. Arn, 474 U.S. 140, 152 (1985); 28 U.S.C. § 636(b)(1)(C). Nevertheless, the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987), writ denied 484 U.S. 837 (1987); Garcia v. I.N.S., 733 F. Supp. 1554, 1555 (M.D. Pa. 1990) (Kosik, J.) (stating "the district court need only review the record for plain error or manifest injustice"). In the absence of objections, review may properly be limited to ascertaining whether there is clear error that not only affects the rights of the plaintiff, but also seriously affects the integrity, fairness, or public reputation of judicial proceedings. Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (Vanaskie, J.). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. § 636(b)(1)(C); Local Rule 72.3.

In his Report of June 9, 2011, Magistrate Judge Mannion recommends the dismissal of Plaintiff's motions for default judgment against Defendants Clemente

and Cope. (Doc. 56). Specifically, Magistrate Judge Mannion determined that Plaintiff has failed to file an affidavit stating whether or not Defendants Clemente and Cope are in military service in accordance with the Servicemembers Civil Relief Act. (Doc. 56, pp. 2-3). Under the Servicemembers Civil Relief Act, a court, before entering default judgment against a defendant who fails to enter an appearance, shall require the plaintiff to file an affidavit with the court stating whether or not the defendant is in military service and showing necessary facts to support the affidavit. 50 App. U.S.C. § 521(b)(1). Because Plaintiff has failed to meet this requirement, the Magistrate Judge properly determined that default judgment was not appropriate. Accordingly, the motions for default judgment will be denied.

#### **Conclusion**

For the reasons contained herein, the Report and Recommendation will be adopted and Plaintiff's motions for default judgment against Defendants Cope and Clemente will be denied.

**Date: July 5, 2011**

A handwritten signature in black ink, appearing to read "William J. Mannion", written over a horizontal line.

**United States District Judge**

**UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**


EDWARD COSS,	:	CIVIL ACTION NO. 3:CV-10-1479
Plaintiff	:	
	:	
v.	:	(Judge Nealon)
	:	(Magistrate Judge Mannion)
PAUL J. WARE, <u>et al.</u> ,	:	
Defendants	:	

**ORDER**

AND NOW, THIS 5th DAY OF JULY 2011, **IT IS HEREBY ORDERED**

**THAT:**

1. The Report and Recommendation (Doc. 56) is **ADOPTED**;
2. The Plaintiff's motion for default judgment against Defendant Clemente (Doc. 40) is **DENIED**;
3. The Plaintiff's motion for default judgment against Defendant Cope (Doc. 52) is **DENIED**; and
4. This matter is returned to Magistrate Judge Mannion for further proceedings.

  
United States District Judge